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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,551	08/09/2001	Peter M. Bonutti	BON-3188-3	7485

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EXAMINER

BUI, VY Q

ART UNIT PAPER NUMBER

3731

DATE MAILED: 08/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/925,551

Applicant(s)

BONUTTI, PETER M.

Examiner

Vy Q. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 April 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 71-108 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 71-108 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 71-75, 79-80, 82-85, 87-92, 94-95, 99-100, 102-105, 107-108 are rejected under 35 U.S.C. 102(e) as being anticipated by McGuire (5,865,834).

McGuire (Figs. 1, 4a-4b, 5-6; col. 9, ll. 60-64) discloses autogenous bone or freeze-dried bone anchor/plug 25, suture and suture holes 27 (Fig. 4a-4b; col. 6, lines 19-36), cutting tool 33 to cut out the autogenous bone plug 25, elongate member/drill to form passages for suture 27 in bone plug 25. Allograft bone plug can be provided from a freeze-drying process.

Notice that holes/passages 27 are formed by drilling through anchor/bone plug 25 (col. 6, lines 34-36) and have a larger diameter than that of the suture (Fig. 4a-4b). Therefore, the suture of McGuire can slide freely through the passages drilled in bone anchor/plug 25 as recited in the independent claim 71. In addition, notice that bone anchor/plug 25 secures first tissue (femur 14) and second tissue (tibia 12) and retains first tissue (femur 14) and second tissue (tibia 12) against relative movement relative to each other each as recited in the independent 91 because anchor/plug 25 does not

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allow a separation/relative movement of the first tissue (femur 14) linearly away from second tissue (tibia 12).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 77-78, 81, 86, 93, 97-98, 101, 106 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGuire (5,865,834).

As to claims 77, 97, McGuire discloses substantially every limitation, including a freeze-dried bone anchor 25, as recited in the claims, except for the freeze-dried bone is a cartilage. Cartilage is one well-known type of bone, it would have been obvious to one of ordinary skill in the art to substitute cartilage for a bone tissue because cartilage is just another type of bone.

As to claims 78, 98, McGuire discloses substantially every limitation, including a freeze-dried tissue as bone anchor 25, as recited in the claims, except for the freeze-dried tissue is a tendon. Tendon is well known for high mechanical strength suitable for anchoring different body components one to another. It would have been obvious to one of ordinary skill in the art to make an anchor member from a freeze-dried tendon tissue for this configuration would provide an anchor member mechanically strong to anchor different body components together.

As to claims 81, 86, 93, 101, 106, McGuire discloses substantially every limitation, including a freeze-dried tissue as bone anchor 25, as recited in the claims,

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except for a process of squeezing water from a sheet of freeze-dried body tissue.

Pressing a tissue to squeeze water from the tissue is well known process. It would have been obvious to one of ordinary skill in the art to dry a tissue by the mechanical squeezing process as recited in the claims.

#### ***Allowable Subject Matter***

Claims 76, 96 are allowed.

#### ***Response to Arguments***

Applicant's arguments filed 4/30/2004 have been fully considered but they are not persuasive.

In response, please see the notice in the above rejection of claims 71 and 91.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 703-306-3420. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McDermott or Shaver can be reached on 703-308-0858. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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08/05/2004

Vy Q. Bui  
Primary Examiner  
Art Unit 3731